

MEMORANDUM ENDORSEMENT

Hutter v. Countrywide Bank, et al., 09-cv-10092 (NSR)

The Court Denies Defendant Countrywide Bank's attached request to reject Plaintiff's motion based on improper service. The Court Grants Defendant Countrywide Bank's request to amend the briefing schedule as follows: opposition papers to be served by January 7, 2014; and reply to be served January 21, 2014. All motion papers are to be filed on or immediately after January 21, 2014.

Dated: December 6, 2013
White Plains, NY

SO ORDERED.

 12/06/13

Nelson S. Román, U.S.D.J.

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December 4, 2013

BY FACSIMILEHonorable Nelson S. Roman
United States District Judge
The Hon. Charles L. Brieant, Jr.
Federal Building and United States Courthouse
300 Quarropas Street
White Plains, New York 10601

Facsimile No.: (914) 390-4179

Hutter v. Countrywide Bank, N.A., et al.
Case No. 09 CV 10092 (ER) (NSR)

Dear Judge Roman:

We are counsel to defendant Bank of America, N.A., successor to named defendant Countrywide Bank, N.A. ("BANA"). We write to advise the Court that counsel's service of plaintiff's motion for leave to file a fourth amended complaint (the "Motion") violated the court's Order made during the November 7, 2013 conference (the "Conference"). Particularly as this violation was to the prejudice of BANA, this Court should either reject the motion or extend BANA's time to file opposition.

Pursuant to the briefing schedule established by Your Honor, plaintiff's Motion was to be served by Monday, November 25, 2013 and defendants' opposition by December 23, 2013. Due to the upcoming Thanksgiving holiday, and specifically because I was scheduled to be out of the office starting on Wednesday November 27, I requested at the Conference the Court require service by overnight delivery to insure delivery before I left for the holiday weekend. Your Honor granted this request, and the Minute Entry clearly states, "[A]ll documents shall be served by overnight service". (See November 7, 2013 Minute Entry).

According to the courier's label on the envelope containing the Motion, on November 25, 2013, counsel served the motion, not by overnight delivery, but for delivery two business days later. Consequently, this office did not receive the motion until late

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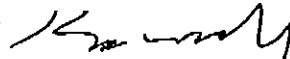
Honorable Nelson Roman
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Wednesday morning, November 27, 2013. At the time of receipt, I was at the airport waiting for a flight for the long weekend. Due to counsel's failure to follow the Court's order, I lost valuable time to review the motion and plan opposition as I did not return to the office until Monday, December 2, 2013. We assented to the briefing schedule with the explicit understanding that plaintiff was required to ensure we received the motion before I left for the holiday to allow sufficient time for the preparation of opposition before the Christmas Holiday. We lost almost one week due to counsel's violation.

Therefore, if the Court does not reject plaintiff's motion based on improper late service, we respectfully request the briefing schedule be amended as follows, so as to take into account the time lost as a result of improper service and the fact that a day-for-day extension would cause issues over the Christmas and New Year's holidays:

1. Opposition to plaintiff's Motion is due by January 7, 2014.
2. Plaintiff's reply papers are due by January 21, 2014.

Respectfully submitted,



Kenneth C. Rudd

KCR:cla
Enclosure

cc: All appearing counsel (by facsimile)